IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10036 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATKUMAR SHANTILAL PANDYA - Petitioner(s)

Versus

GSRTC - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

MR HS MUNSHAW for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 21/06/2005

ORAL JUDGMENT

1.0 The petitioner herein has challenged the order dated 04.05.1999 passed by the Labour Court, Ahmedabad, in Reference NO.455 of 1995,

whereby the said Reference was rejected.

2.0 The petitioner was working as a reliever Watchman at the Botad Depot of the respondent Corporation during the period from January 1993 to April 1994. The services of the petitioner came to be terminated on 05.04.1994. Feeling aggrieved by the said action, the petitioner served a legal notice to the respondent Corporation through his Advocate on 09.04.1994.

2.1 Since no reply was given by the respondent Corporation to the said legal notice, the petitioner raised industrial dispute under Section 2(A) of the I.D.Act which was referred on 17.02.1995 for adjudication being Reference No.455 of 1995. The Labour Court, Ahmedabad, by impugned order rejected the said Reference preferred by the petitioner. Hence, this petition.

3.0 Mr.M H Rathod learned advocate for the petitioner has contended that the Labour Court has gone beyond the scope of the Reference. He has submitted that the petitioner had preferred the Reference to quash and set aside the order of termination and to grant reinstatement with continuity of service and with full back wages for the said period. However, the Labour Court has not adjudicated the said issue and has travelled beyond the scope of the Reference.

3.1 Mr.Rathod has further contended that since the petitioner has completed one year's continuous service within the meaning of Section 25(B) of the I.D. Act and 240 days of service within the last twelve months from the date of termination, the petitioner is entitled to protection u/s.25(F) of the I.D. Act. Mr.Rathod has produced on record

a copy of the Muster Roll for the period from January 1993 to March 1994.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. From the Muster Roll maintained by the respondent Corporation and which is produced on record, it is clear that from April 1993 onwards, the petitioner has worked for more than 25 days every month till March 1994. Therefore, in the last preceding year, the petitioner workman has worked for more than 240 days, and, is accordingly, entitled for protection u/s.25(F) of the I.D. Act.

4.1 While considering the case of termination, the Labour Court has all throughout considered the issue as if the petitioner was claiming permanency in service and has not given any finding as to whether there was breach of Section 25(F) of the I.D. Act or not. Moreover, it has not given its finding on the issue that one Khachar Ravatbhai Apabhai was subsequently appointed by the respondent Corporation after the petitioner was terminated from the service. Hence, in my opinion, the Labour Court has committed an error in not considering the issue on the point of breach of Sections 25(F) and 25(G) & 25(H) of the I.D.Act. In that view of the matter, the impugned order of the Labour Court is required to be quashed and set aside.

5.0 For the forgoing reasons, this petition is allowed. The impugned order dated 04.05.1999 passed by the Labour Court, Ahmedabad in Reference NO.455 of 1995 is quashed and set aside. The Labour Court, Ahmedabad is directed to reconsider the matter afresh considering the evidence on record and shall pass appropriate orders on merits. Since the Reference is of the year 1995, the Labour Court, Ahmedabad, is

directed to decide the same within a period of six months from the receipt of writ of this order. With the above directions, this petition stands disposed of. Rule is made absolute to the aforesaid extent with no orders as to costs.

(K. S. JHAVERI, J.)

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